IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

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Narendra Kumar Kamboj. Versus State of Rajasthan & ors.

S.B. Civil Writ Petition No. 985/2006

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Date of Order: May 24, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. I.R. Choudhary, for the petitioner.
Mr. B.L. Tiwari, Deputy Government Advocate, for respondents.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to declare that he retired from service with effect from 31-5-2001 on attaining the age of superannuation and further a direction to the respondents to issue retirements orders with all consequential benefits. In the alternative, the petitioner sought a direction to the respondents to treat him a voluntarily retired w.e.f. 22.7.1989 with all consequential benefits.

The facts of the case, in a nut shell, are that the petitioner was appointed as Teacher Grade III on 30-7-1963. Vide order dated 22-7-1989, he was transferred and releived from the Government Primary School, Subhanala, whereupon he

made a representation on 4-8-1990 for cancellation of the transfer order and alternatively sought voluntary retirement. Thereafter on 15-9-2004, he served a notice upon the respondents vide Annx.2 and a reply to that notice was given by the respondents on 28-10-2004. Thereafter again on 5-5-2005 and thereafter the petitioner submitted several representations but nothing has been heard thereon. Ultimately, the petitioner attained the age of 58, which, at the relevant time, was the age of superannuation, but no retiral benefits have been granted to him. Hence this writ petition.

A reply to the writ petition has been filed by the respondents stating therein that the petitioner remained absent from the duty for a pretty long time. The petitioner was working at the Primary School at the block Sadul Sahar which was upgraded as Middle School but the petitioner was having the qualification of Headmaster (Primary), therefore, he was transferred at the Primary School, Subhan Aala, but he did not join there and remained absent from duty from 22-7-1989 till the date of his retirement on 31-5-2001. It was further stated in the reply that vide representation Annx.1, the petitioner, in the alternative, sought for voluntary retirement, which could not be permitted as per rule 244 (1) of the Rajasthan Service Rules, 1951, as the application for voluntary retirement should have been submitted before 90 days from the date of seeking such

voluntary retirement. It was further stated that the petitioner had no sufficient cause for not joining the duty at the place where he had been transferred.

I have heard learned counsel for the parties.

It has been contended by the learned counsel for the petitioner that despite repeated representations, the same have not been considered till the age of superannuation of the petitioner, nor any retiral benefits have been paid to him. Had the respondents treated the petitioner as absentee then too an inquiry to this effect ought to have been initiated, but the same was not held, therefore, the petitioner is entitled for the reliefs claimed in the writ petition.

Learned Deputy Government Advocate appearing for the respondent-State submits that the petitioner did not join the duty at the transferred place and vide representation dated 4.8.1990, he requested for cancellation of his transfer order Annx.1 dated 22-7-1989 alternatively praying for voluntary retirement, which could not be accepted as such conditional voluntary retirement cannot be allowed in view of the provisions of Section 244 (1) of the Rajasthan Service Rules, 1951. It has further been stated that since the petitioner did not join the duty in pursuance to his transfer order Annx.1, he was declared absentee and in his absence, no formal order of retirement could be passed and in absence thereof, the retiral benefits could not

be paid to him.

From the facts on record, it is clear that the petitioner was transferred vide order dated 22-7-1989 from Primary School at Block Sadul Sahar to Primary School, Subhan Aala, as the primary school at Sadul Sahar was up-graded as Middle School but according to the respondents, the petitioner was holding the qualifications of the Headmaster of Primary School. Instead of joining the duty at the transferred place, the petitioner, after nearly one year i.e. on 4-8-1990 made a representation for cancellation of his transfer and thereafter he continued to make representation one after the another till 19-9-2005, but did not join the duty till the date of his superannuation and thereby remained absent from duty.

In M/s. Jeewan Lal (1929) Ltd., Calcutta Vs. Its Workmen, AIR 1961 SC 1567; and Shahoordul Haque Vs. The Registrar, Co-operative Societies, Bihar & Anr., AIR 1970 SC 1890, the Hon'ble Supreme Court held that in such a case, long unauthorized absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee and being a case of abandonment of service, no notice/inquiry is required.

In State of Haryana Vs. Om Prakash & Anr., (1968) 8 SCC 733, the Hon'ble Apex Court explained the distinction between “retrenchment” and “abandonment” from service,

observing that termination contemplates an act on the part of the employer which puts an end to service to fall within the definition of the expression "retrenchment" and in case the workman does not report for duty, it would amount to abandonment of service by employee of his free will and the employer would have done nothing, whatsoever, to put an end to his employment and, therefore, the case does not fall within the meaning of "retrenchment." A similar view has been taken by this Court in Vijay Singh Charan Vs. Management, Shri Swetamber Nakoda Parshwnath Tirth Mewa Nagar & Anr., 1999 (1) RLW 314.

In Punjab & Sind Bank & ors. Vs. Sakattar Singh, (2001) 1 SCC 214, the Hon'ble Supreme Court held that if an employee has no intention to join duty and does not turn up inspite of notice, nor gives an explanation for his absence satisfying the Management that he has not taken up another employment or avocation and that he has no intention of joining the duty, the employee will be deemed to have retired from service on expiry of the time fixed in the notice.

In Aligarh Muslim University Vs. Mansoor Ali Khan, (2000) 7 SCC 529, the Hon'ble Supreme Court held that holding enquiry in a case where there can be no answer to the charges, would be a useless formality. Similar view has been reiteraeted in Union of India & Anr. Vs. Mustafa & Najibai Trading Co. & Anr.,

(1998) 6 SCC 79; Dr. J. Shashidhara Prasad Vs. Governor of Karnata & Anr., (1999) 1 SCC 422; M.C. Mehta Vs. Union of India, (1999) 6 SCC 237; and Designated Authority (Anti Dumping Directorate), Ministry of Commerce Vs. Maldor Topsoe A/S, (2000) 6 SCC 626. In M.C. Sarin Vs. Union of India, AIR 1976 SC 1686, the Hon'ble Apex Court held that the rule of natural justice must not be stretched too far. Only too often, the people who have done wrong seek to invoke the rule of natural justice so as to avoid the consequence. Therefore, in view of the above, it cannot be held that in each and every case, non-observance of principles of natural justice would vitiate the order and it has to be understood in the context and facts-situation of each case and requirement of statutory Rules applicable therein.

The same view has been reiterated by this Court in Dr. S.K. Agrawal Vs. JNV University & ors., SBCWP No.1468/1999 decided on 15-2-2001, which has been affirmed by a Division Bench of this Court in Dr. S.K. Agrarwal Vs. Jai Narain University, Jodhpur & ors., D.B. Civil Special Appeal No.444/2001 decided on 17-7-2001.

In the instant case, the petitioner did not join the duty at the transferred place in pursuance of the transfer order dated 22-7-1989 and made a representation for the first time on 4-8-1990, i.e. After nearly one year and thereafter he continued to make representations instead of joining the duty at the

transferred place. In the representation dated 4-8-1990, he made an alternative prayer for voluntary retirement, which, according to the learned Deputy Government Advocate, cannot be adhered to in view of the provisions of rule 244 (1) of the Rajasthan Service Rules, 1951 as the application for voluntarily retirement should be submitted by the employee before 90 days from the date of retirement. In this view of the matter, it is a clear case of abandonment of service/absent from duty, and in view of the legal position culled out from the decisions of the Hon'ble Supreme Court, in such case, even no notice or inquiry is required.

In this view of the matter, I do not find any merit in the writ petition and it is dismissed. There shall be no order as to costs.

(H.R. PANWAR), J.

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